

**EPA Region 8 Brownfields Program
Site Eligibility Determination Outline**

*To be used for determining site eligibility under community-wide Assessment Grants,
RLF Grants, and site-specific work under 128(a) Grants*

A. GENERAL INFORMATION

1. Grantee Name: [City of Cheyenne](#)
(Contact: [Matt Ashby – Planning Services Director](#))
[2101 O’Neil Avenue](#)
[Cheyenne, Wyoming 82001](#)
Phone: [307.637.6271](#) Fax: [307.637.6256](#)

2. Grant Number: [#BF - 96807601 - 0](#)

3. Name of RLF Applicant (RLF only):

4. Grant Type:

- ☒ 104(k) Assessment
☐ 104(k) RLF
☐ 128(a) State
☐ 128(a) Tribal

5. Work to be conducted (please check all that apply):

- ☒ Phase 1 Assessment
☒ Phase 2 Assessment
☒ Cleanup Planning
☐ RLF Loan
☐ RLF Subgrant

6. How much funding do you anticipate spending on the site?

Phase I ESA	\$ 4,000
Phase II Work Plan	\$ 5,000 (if required)
Phase II ESA	\$15,000 (if required)
Remedial Action Plan	\$10,000 (if required)

7. Date of proposed work: [Phase I – immediately, Phase II pending work plan approval.](#)

8. Date of this document: [May 29, 2013](#)

B. BASIC SITE INFORMATION

1. Property Name: [West 17th Street Site, PID 13660620100300](#)

2. Property Address: 517 West 17th Street Site. The site is approximately 0.4 acres, or 17,424 square feet.

3. Who is the current owner of the property? Please include the date the property was acquired, or date of planned acquisition. The Dinco Development LLC currently owns the parcel. The planned date of acquisition has not yet been determined.

4. Known or Suspected Contaminant(s):

- ☐ Hazardous Substances (including mine scarred lands and controlled substances)
- ☒ Hazardous Substances Commingled with Petroleum
- ☐ Petroleum Only

5. List known or suspected contaminants: To the best of our knowledge, this site had been a former feed mill and carriage house and in more recent decades the site had operated as the Wortham Machinery Company. According to the Wyoming Department of Environmental Quality this site had both contaminated soil and contaminated groundwater with the simplified database description listing chlorinated solvents as one of the types of contamination. A certificate of completion (COC) was awarded on June 26, 2006 and the site owners had entered the VRP program on July 13, 2005. On May 23, 2013, Lilly at Wyoming DEQ was contacted for additional information regarding the site contamination history. Lilly indicated that the site was old enough to be archived so they did not have immediate file access. She stated the award of the Certificate of Completion indicated that site cleanup was addressed to the DEQ's requirements at the time, there was a "remedy agreement" and they do have liability insurance. Lilly however did not know if the "remedy" included capping, natural attenuation or other forms of mechanical controls nor was she able to access the file to see how much contamination remained either in the soil or in the groundwater. She stated the hardcopy of the file would have to be reviewed in person to determine what the COC conditions were at that time.

In general, a certificate of completion documents DEQ's determination that, at the time the certificate is issued, all remediation requirements necessary to protect human health and the environment have been successfully completed and that DEQ currently has no plans to further evaluate the site or to impose additional remediation requirements. Although under the current ownership the site meets the COC qualifications, it does not necessarily indicate that site development activities (i.e. construction of underground parking, stormwater control structures, or soil/groundwater modifications) will not require further remediation controls. Consequently, a complete file review during the proposed Phase 1 activities is a necessity.

Based upon our review of Sanborn Fire Insurance Maps, this site has been primarily industrial. Research also indicates that the Wortham Machinery Company was in operation beginning in approximately 1931. In addition, surrounding properties have

included a laundry, animal hide treatment operations, auto repair, dry cleaner, and the adjacent property had multiple underground gasoline storage tanks.

Those historic operations have the potential to have left a history of contamination in connection with this site. Real or perceived environmental impacts at this site include but are not limited to: (1) oil and diesel spills, metals, and chlorinated solvent concerns in soil and groundwater from former gasoline stations and animal tanning operations; (2) fill materials of unknown origin; and (3) solvents, oils, metals, and possible PCE contamination from former dry cleaning operations.

6. Identify when and how the site became contaminated and describe previous known uses. If the land has been vacant for many years, why does the grantee think that it is contaminated? ([See item 5 above](#)) - This is one of the properties located within the West Downtown Live/Work Zones, a USEPA assessment grant focus area. Based upon Sanborn Fire Insurance Maps and a review of other historical documents, this parcel and parcels directly adjacent to it - operated as industrial type properties for almost a century. In addition to Wortham Machinery Company operating for over 70 years, laundries (both steam and dry cleaning), tanning operations, and petroleum storage tanks were present over the course of history. As discussed above, we are also aware that the site was contaminated with chlorinated solvents which were previously addressed under the State's VRP program.

The subject parcel is also part of the current flood zone and lies adjacent to or within 500 feet of a variety of real or potential recognized environmental concerns, including: 14 parcels within the 100-year floodplain; 5 WDEQ registered sites involving petroleum; 30 sites having documented history of the following - auto repair, filling stations, lumber mills, a machine shop, a plumbing shop, a dry cleaner and film processing facilities. Additionally, the repeated flooding and overland stormwater flow associated with this site, and the adjacent chlorinated solvent plume, provide other means for contributing contamination onto or beneath the subject property.

7. Does the site meet the definition of a Brownfields Site? (Is the site "real property, the expansion, redevelopment or reuse of which is complicated by the presence or potential presence of hazardous substances, pollutants or contaminants"?)

☒ YES ☐ NO

8. Please explain how the reuse of the site has been inhibited by presence or potential presence of contamination. As part of the *PlanCheyenne* 2006 development directives, this parcel and the surrounding corridor are critical to the City, County, WDEQ, and state supported need to address stormwater runoff, flooding and contamination impacting Crow Creek. Initial environmental assessment and investigation of this parcel and adjacent parcels is vital to addressing water quality enhancements, stormwater management goals, and the economic vitality of downtown Cheyenne. In particular this site has been identified as a key location for the stormwater/public use venue within the downtown renovation efforts.

The flood conditions described below encompass the majority of the properties being focused on under the Cheyenne EPA Assessment Grant so a description of the area is provided within each Site Eligibility Determination submitted:

Flooding: Downtown is located in a low-lying sump area of the catchment zone within the Capitol Drainage Basin. Consequently, stormwater inundation of the downtown via overland flow can be as deep as five feet after a typical storm event. The Capitol Drainage Basin encompasses 11.7 square miles and storm water drainage is seriously inadequate – particularly within the downtown *Lower Capitol Basin*. Because downtown development occurred before water quality and natural resource preservation became standard, this area is now suffering from the consolidation of multiple natural waterway confluences which lead into Crow Creek.

The Water Quality Division (WQD) 2007-2008 Water Quality Assessment Report for Crow Creek, South Platte Basin, indicates that the City of Cheyenne appears to have a major impact on the water quality of Crow Creek. The study reported the primary source of excess sediment loading from stormwater runoff is the City. Additionally, the presence of extensive blighted areas within the Lower Capitol Basin indicates that potential contamination associated with these blighted properties causes further deterioration of water quality from runoff prior to discharge to outfalls located on Crow Creek.

C. SITES NOT ELIGIBLE FOR FUNDING BY STATUTE

If the answer is Yes to any of the questions below (C1-3) the site is not eligible.

1. Is the facility listed (or proposed for listing) on the National Priorities List?
☐ YES ☒ NO
2. Is the facility subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under CERCLA?
☐ YES ☒ NO
3. Is the facility subject to the jurisdiction, custody, or control of the US government. (Land held in trust by the US government for an Indian tribe is eligible.) ☐ YES ☒ NO

D. SITES ONLY ELIGIBLE FOR FUNDING WITH A PROPERTY SPECIFIC DETERMINATION BY EPA:

If the answer is Yes to any of the below questions (D1-6), then a property specific determination is required. The grantee will need to submit additional information, which can be found in Appendix A to this document.

1. Is the site/facility subject to a planned or ongoing CERCLA removal action?
☐ YES ☒ NO

2. Has the site/facility been the subject of a unilateral administrative order, court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties, or been issued a permit by the U.S. or an authorized state under the Solid Waste Disposal Act (as amended by the Resource Conservation and Recovery Act (RCRA)), the Federal Water Pollution Control Act (FWPCA), the Toxic Substances Control Act (TSCA), or the Safe Drinking Water Act (SWDA)?

☐ YES ☒ NO

3. Is the site/facility subject to corrective action orders under RCRA (sections 3004(u) or 3008(h)) and has there been a corrective action permit or order issued or modified to require corrective measures? ☐ YES ☒ NO

4. Is the site/facility a land disposal unit that has submitted a RCRA closure notification under subtitle C of RCRA and is subject to closure requirements specified in a closure plan or permit? ☐ YES ☒ NO

5. Has the site/facility had a release of polychlorinated biphenyls (PCBs) that is subject to remediation under TSCA? ☐ YES ☒ NO

6. Has the site/facility received funding for remediation from the leaking Underground Storage Tank (LUST) Trust Fund? ☐ YES ☒ NO

E. HAZARDOUS SUBSTANCE/COMMINGLED CONTAMINATION SITES

For petroleum only sites, skip to F.

1. Does the grantee/RLF applicant own the site? YES NO ☒ **The City of Cheyenne has no intention of owning this parcel at this time.**

2. Answer the following if the grantee/RLF applicant *is the current site owner*:

a. Is the owner a Unit of State or Local Government **or** Other

b. If the owner is a governmental unit, how was the property acquired?

Tax Foreclosure ☐ Donation ☐ Eminent Domain ☐ Bought it outright

☐ Other (Explain):

Date acquired: _____

(If property was acquired by one of the first 3 options (tax foreclosure, donation or eminent domain) you, do not need to answer c or d)

c. Did the owner conduct All Appropriate Inquiry prior to acquiring property?

Please include dates AAI was performed. **N/A**

☐ YES ☐ NO

d. Did the owner take reasonable steps with regards to the contamination at the site? **N/A**

☐ YES ☐ NO

e. Does the owner have a defense to CERCLA liability?

☐ YES – Bona Fide Prospective Purchaser (BFPP)

☐ YES – Contiguous Property Owner

☐ YES – Innocent Land Owner

☐ YES – Indian Tribe

X NO. The Dinneen Family has owned the parcel for several decades and did not conduct environmental due diligence prior to their acquisition. However, the subject parcel is included in the voluntary remediation program under the guidance of the WDEQ. This is a sub-parcel on a developed portion of the block that is already enrolled in the VRP.

f. Is the owner liable at the site as an ☐ Operator, ☐ Arranger, **or** ☐ Transporter
OR **X Not Applicable**

g. Did all disposal of hazardous substances at the site occur before the owner acquired the property? **X YES** ☐ NO

h. Did the owner cause or contribute to any release of hazardous substances at the site? ☐ YES **X NO**

3. Answer the following if the grantee/RLF applicant *is not the site owner*.

a. Is the grantee/RLF applicant liable at the site as an ☐ Operator, ☐ Arranger, **or** ☐ Transporter

OR **X Not Applicable**

F. PETROLEUM ONLY CONTAMINATION SITES *N/A*

If petroleum is not the predominant contaminant on the site, skip this section and proceed to section G. Petroleum sites need a written site eligibility determination by the state or EPA.

1. If the state *has made* the petroleum eligibility determination, the grantee/RLF applicant must provide EPA with the letter from the state.

2. If the state *was unable to make* the determination, EPA must make the determination consistent with the Guidelines (note that EPA staff will need to refer to Appendix 3 of the FY06 Guidelines to conduct the petroleum determination). The grantee/RLF applicant must provide information regarding the following:

a. Whether the site is of “relatively low risk” compared with other “petroleum-only” sites in the state. Two key questions for this determination follow:

1. Have Leaking Underground Storage Tank funds been expended at this

site?

☐ YES ☐ NO

2. Have Federal Oil Pollution Act response funds been expended at this site?

☐ YES ☐ NO

b. Whether there is a viable responsible party at the site. Key questions for this determination follow:

1. Was the site last acquired through tax foreclosure, abandonment or equivalent government proceedings? ☐ YES ☐ NO

2. Has a responsible party been identified through:

a) a judgment rendered in a court of law or an administrative order that would require any party to assess, investigate, or cleanup the site; ☐ YES ☐ NO or

b) a filed enforcement action brought by federal or state authorities that would require any party to assess, investigate, or cleanup the site; ☐ YES ☐ NO or

c) a citizen suit, contribution action or other 3rd party claim against the current or immediate past owner, that would, if successful, require that party to assess, investigate, or clean up the site. ☐ YES ☐ NO;

Skip to "b.5" if the site was acquired through tax foreclosure, abandonment or equivalent government proceedings; if not, answer question b.3 and b.4.

3. The current owner is: _____ [fill in the blank] Has the current owner:

a) dispensed or disposed of petroleum or petroleum product at the site?

☐ YES ☐ NO

b) owned the property during the dispensing or disposal of petroleum product at the site? ☐ YES ☐ NO

e) exacerbated the contamination at the site? ☐ YES ☐ NO

d) taken reasonable steps with regard to contamination at the site, ☐ YES ☐ NO.

4. The immediate past owner is: _____ [fill in the blank] Has the immediate past owner:

a) dispensed or disposed of petroleum or petroleum product at the site? ☐ YES ☐ NO

b) owned the property during the dispensing or disposal of petroleum product at the site? ☐ YES ☐ NO

c) exacerbated the contamination at the site? ☐ YES ☐ NO

d) taken reasonable steps with regard to contamination at the site, ☐ YES ☐ NO

5. Based on the above, for purposes of Brownfields funding, is there a responsible party? ☐ YES ☐ NO If "YES" go on to #6, if "NO" proceed directly to F.2.C.

6. If there is a responsible party, is that party viable (has adequate financial resources to pay for assessment of the site). ☐ YES ☐ NO If "NO", explain the basis for that conclusion:

If there is a viable responsible party, the petroleum site is ineligible. If there is no responsible party, or if there is a responsible party who is not viable, continue. NOTE: States may apply their own laws and regulations to make the petroleum site determination instead of the previous questions; if they do so, the grantee must submit their determination and rationale.

c. Whether the grantee/RLF applicant is potentially liable for cleaning up the site. Key questions for this determination follow:

1. Has the grantee/RLF applicant ever:

a) dispensed or disposed of petroleum or petroleum product at the site? ☐ YES ☐ NO

b) exacerbated the contamination at the site? ☐ YES ☐ NO

d. Is the site subject to any order issued under Sec. 9003(h) of the Solid Waste Disposal Act? ☐ YES ☐ NO

G. ACCESS

Does grantee/RLF applicant have access or an access agreement for this property?

☒ YES ☐ NO

H. SITE ELIGIBILITY DETERMINATION BY EPA PROJECT OFFICER

Please Note: If there are any questions on eligibility the Project Officer should consult with Michael Boydston, EPA Counsel.

Site ☐ is / ☐ is not eligible for site assessment activities using EPA Brownfields Funds -- OR --

☐ Site is eligible but requires an EPA Property-Specific Determination, for which additional information was provided.

EPA Project Officer

Date:

I. EPA NOTIFICATION TO APPLICANT OF SITE ELIGIBILITY

Date Sent : _____ Copy of Notification Attached: ☐ YES ☐ NO

APPENDIX A: [IF REQUIRED] INFORMATION TO SUPPORT PROPERTY SPECIFIC DETERMINATION by EPA

Grantee must explain why Brownfields financial assistance is needed and how it will protect human health and the environment and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways undeveloped property, other recreational property, or other property used for nonprofit purposes.